

Commercialization of Amateur Radio: The Rules, The Risks, The Issues

Introduction

From its founding in 1914 to the present day, the American Radio Relay League has fostered Amateur Radio public service and emergency communications activities. The League encourages organizations engaged in disaster relief to make appropriate use of Amateur Radio. Further, the League welcomes new, public-service minded licensees from all occupational and professional backgrounds.

The ARRL believes that the Amateur Radio Service and our emergency communications activities flourish best in an atmosphere of respect for and compliance with the FCC's Rules. These Rules provide for more flexibility than is typical of other radio services. They guide our operations and assist us in protecting the spectrum allocated to the Amateur Radio Service from encroachment by commercial interests.

This document is not intended to discourage anyone from becoming an Amateur or to discourage any organization from promoting an interest in Amateur Radio among its employees and volunteers. Nor does it signal any change in the League's long-standing devotion to public service and emergency communications. Its objective is to educate both Amateurs and the organizations we serve about what is permitted under the FCC's current Rules and to assist Amateurs in making reasoned decisions about the appropriateness of services we may offer to organizations in our communities.

Background

In the Basis and Purpose section of Part 97¹, the FCC states that these Rules and Regulations "are designed to provide an amateur radio service having a fundamental purpose as expressed in the following principles," the first of which is as follows:

(a) Recognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications.[§97.1]

The League believes that emergency communications and public service communications should be readily provided by Amateur Radio operators where the public is the principal beneficiary. The League also believes that, with forethought and understanding of the FCC's Rules, it is possible to provide emergency communications for many kinds of organizations in our communities without violating the Rules.

The ARRL's intention here is to present relevant excerpts from the FCC's Rules that pertain to communications on behalf of others, especially by employees on behalf of their employers, and to offer guidelines for safeguarding Amateur Radio from inappropriate use by commercial, non-profit, and government entities.

In 1993, in Docket 92-136, the FCC (in response to an ARRL request) relaxed the restrictions on business communications in the Amateur Radio Service. The reason for the change was “to give amateur operators greater flexibility to provide communications for public service projects as well as to enhance the value of the amateur service in satisfying personal communication needs.” The change made life easier for *volunteer* Amateur Radio communicators. However, there was *no change* to rules that *prohibit* communications in which the operator has a pecuniary interest, including *communications on behalf of an employer*. With very limited and very specific exceptions, such communications are now – and always have been – *expressly prohibited*.

In 2007, after a series of major disasters in the United States in which Amateur Radio operators made great contributions and attracted much attention from emergency responders, the ARRL’s National Emergency Response Planning Committee’s report² to the ARRL Board of Directors noted that:

“We may be entering an era when a different kind of threat to Amateur Radio spectrum has to be dealt with, one which is directly related to emergency communications. In addition to protecting our spectrum from our enemies, sometimes we also have to protect it from our friends. These are entities which have become aware of Amateur Radio’s value during disasters, either from first-hand observation or from our effective public relations efforts.

“Some organizations are expressing interest in using Amateur Radio in ways that are not in the best interests of our radio service and that run contrary to the spirit if not the letter of the FCC’s Rules.

“We are hearing about agencies which, having heard that Amateur Radio works ‘when all else fails,’ decide that the answer to their communications problems is to get some Amateur Radio gear. They have heard that in life-and-death situations the FCC’s Rule about having licenses goes out the window, so (their line of reasoning goes) it will be all right to just skip the licensing bit and plan to use Amateur Radio equipment for disaster communications.

“These organizations are not enemies of Amateur Radio. On the contrary, their interest in Amateur Radio exists because they admire Amateur Radio’s proven emergency communications ability.

“However, they could become adversaries if the ARRL does not take the necessary steps to show them how they can use Amateur Radio within the spirit of the FCC’s Rules. For example, they could form agreements with existing Amateur Radio emergency communications groups. Alternatively, the FCC has stated more than once that the Rules do not prohibit Amateurs ‘who are emergency personnel engaged in disaster relief from using the amateur service bands while in a paid duty status.’ [See *Report and Order*,

FCC 06-149, 21 FCC Rcd.11643, released October 10, 2006 at Paragraph 52, and the Order, DA-99-2654,14 FCC Rcd. 20595, released November 29, 1999 (WTB)]

The organizations which have shown interest in having their employees use Amateur Radio for such business purposes as interoperability and continuity of operations are not limited to charities, medical facilities, law enforcement and firefighters, or emergency management agencies. The ARRL has been informed that enterprises as diverse as insurance companies, federal agencies not engaged in emergency preparedness, city government, state government, and businesses offering continuity of operations services to clients may be using or may be planning to have employees use Amateur Radio. Some of these entities have even questioned the necessity for their employees to have licenses in order to use Amateur Radio frequencies.

Relevant excerpts from the FCC's Rules

§97.7 states that when transmitting, each amateur station must have a control operator. The control operator must be a person:

- (a) For whom an amateur operator/primary station license grant appears on the ULS consolidated licensee database, or
- (b) Who is authorized for alien reciprocal operation by §97.107 of this part.

In other words, the idea that licensing is not necessary if a business's plan is to have employees use Amateur Radio when (in the business's opinion) there is an emergency is very much mistaken. As the National Emergency Response Planning Committee report said, "Imagine the chaos on the Amateur bands if all sorts of unlicensed, incompetent users were to go on the air during a disaster." Planning for unlicensed Amateur operation during anticipated future emergencies is a clearly illegal end-run around the FCC's Rules and the Communications Act of 1934. Perhaps, if an unlicensed person operates an Amateur station without a licensed control operator present during an actual emergency, he or she may not be sanctioned by the FCC after the emergency ends. However, whether or not the sanction is applied, unlicensed operation with no licensed control operator is never permitted by anyone at any time.

§ 97.111 Authorized transmissions.

- (a) An amateur station may transmit the following types of two-way communications:
 - (2) Transmissions necessary to meet essential communication needs and to facilitate relief actions.

§97.113 Prohibited transmissions

- (a) No amateur station shall transmit
 - (2) Communications for hire or for material compensation, direct or indirect, paid or promised, except as otherwise provided in these rules;

(3) Communications in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer.

(5) Communications, on a regular basis, which could reasonably be furnished alternatively through other radio services.

§97.113 goes on to make two exceptions to paragraphs (a)(2) and (a)(3), as follows:

(c) A control operator may accept compensation as an incident of a teaching position during periods of time when an amateur station is used by that teacher as a part of classroom instruction at an educational institution.

(d) The control operator of a club station may accept compensation for the periods of time when the station is transmitting telegraphy practice or information bulletins, provided that the station transmits such telegraphy practice and bulletins for at least 40 hours per week; schedules operations on at least six amateur service MF and HF bands using reasonable measures to maximize coverage; where the schedule of normal operating times and frequencies is published at least 30 days in advance of the actual transmissions; and where the control operator does not accept any direct or indirect compensation for any other service as a control operator.

The FCC's Report and Order, FCC 06-149, 21 FCC Rcd.11643, released October 10, 2006, clarifies the rules for employees by stating that "Section 97.113 does not prohibit amateur radio operators who are emergency personnel engaged in disaster relief from using the amateur service bands while on paid duty status. These individuals are not receiving compensation for transmitting amateur service communications; rather, they are receiving compensation for services related to their disaster relief duties and in their capacities as emergency personnel."

This is not an "exception" to the "no communications on behalf of an employer" rule – it is simply recognition of the public benefit of Amateur Radio stated in the Basis and Purpose section of the Rules at §97.1(a) quoted above. Thus, paid emergency personnel who are licensed amateurs and who find themselves needing to use amateur radio in disaster relief operations can rely on the Commission's statements that they may do so.

However, this clarification from the FCC does not give blanket permission for operators to communicate on behalf of their employers. It applies only to "emergency personnel engaged in disaster relief." It does not apply to training exercises or drills. It does not apply to employees of entities that may encounter business disruptions but which are not in the business (either for-profit or non-profit) of providing disaster relief.

Some Amateurs believe that communications on behalf of one's employer are allowed if the business is not for profit, or if the communications are transmitted outside the employee's regular working hours – when he or she is, so to speak, "not on the clock." The FCC's Rules do not distinguish between for-profit and non-profit organizations. Nor

do the Rules say anything about the employee's working hours or paid duty status. Rather, the rule prohibits all communications on behalf of one's employer, save for two very narrow exceptions [97.113(c) and (d)] quoted above.

The FCC's Rules do not prohibit the recreational use of Amateur Radio by employees at a station located in the workplace, including club stations. Many companies, including the ARRL (WIHQ), provide stations for the recreational use of employees who have Amateur Radio licenses. As long as employees are not communicating *on behalf of their employer*, i.e., doing their employer's business on the air, there is nothing illegal about the operation of these stations on the employer's premises.

How do we know what is legal?

The FCC has declined to provide a list of permitted and prohibited transmissions, including those made in an emergency communications context, saying that because of the wide diversity in the types of communications in which Amateurs want to engage, there would have to be thousands of examples. We are expected to study the Rules and apply critical thinking to the facts at hand.³

How do we decide what is inappropriate, even though it is legal?

Communications for business entities by *volunteers* – that is, by licensed Amateurs who receive no direct or indirect compensation and who have no pecuniary interest in the communications – are legal as long as they are not conducted on a regular basis and otherwise comply with the FCC rules. Still, many volunteers are uncomfortable with providing communications for commercial enterprises and some other entities. There is good reason to be cautious.

It is a narrow path between (1) utilizing beneficial opportunities for public service communications and showcasing the continued relevance and importance of Amateur Radio communications to the public; and (2) allowing organizations to exploit Amateur Radio as a cheap and flexible alternative to the Land Mobile Radio Service, General Mobile Radio Service, or Commercial Mobile Radio Service facilities.

Amateur Radio should not be used as a substitute for Part 90 Land Mobile communications or other reasonably available alternate communications systems, including unlicensed services. Advance planning by businesses and organizations for business restoration communications should normally be done with reference to Part 90⁴ or Part 95⁵ communications facilities. That is to be distinguished from disaster planning or emergency communications planning for the benefit of the public, which should always involve Amateur Radio as at least one component. The fact that an organization may feel that using other radio services is too complicated or too expensive is not a justification for them to use Amateur Radio in ways that are contrary to the purposes of the Amateur Service. The fact that an organization is doing good work is not a justification for ignoring the FCC's Rules, including §97.113(a)(5), or allowing the exploitation of the Amateur Service.

An enterprise, whether for-profit or non-profit, which intends to use Amateur Radio communications on a regular basis for its own basic organizational purposes, but could reasonably use other radio services available to them, should be steered toward those services. *A good rule of thumb when evaluating a particular request for communications support is, "Who benefits?"* If public safety is the principal beneficiary, then §97.1 is being fulfilled. If the entity itself and not the general public is the principal beneficiary, then they should be encouraged to use radio services other than Amateur Radio.

Enterprises that become accustomed to using Amateur frequencies for interoperability, continuity of operations, and to avoid the expense and complications related to other radio services may, at some time in the future, decide to petition to have certain Amateur frequencies allocated to them outright. The belief that these are "our bands" in perpetuity and not subject to reallocation is mistaken. Our access to spectrum is a privilege, not a right, and something that is continuously under re-evaluation.

Reasonable people with well-developed ethical senses and long experience in public service may come to different conclusions about the appropriateness of providing legal volunteer communications on behalf of particular enterprises. Discussion and debate about ethical issues can be constructive rather than divisive and can lead to better decision-making by Amateurs involved in public service. One thing is certain: Our portions of the spectrum are, in commercial terms, of extraordinarily high monetary value to others. How we use them regularly determines our continued tenure.

Why not ask the FCC to decide for us?

Why should Amateurs avoid contacting the FCC to ask if this, that, or the other communication is permissible? There are several reasons. First, the FCC has, for the most part, very clearly put the determination of what communications are proper in the hands of amateurs themselves.

Second, the FCC has declined to give us a list of what events are legal. Devotion of the FCC's resources to detailed analysis and evaluation of hundreds of diverse projects and proposals is not a realistic expectation.

Third, with respect to communications "on behalf of an employer," a subject which has triggered more speculation than any other portion of the rules governing prohibited communications, the rule on the books, which has not changed in many years, is straightforward and clear: Such communications are not permitted. If there is doubt about whether or not certain communications by a radio amateur who is an employee of a business, whether for profit or non-profit, are "on behalf of" the employer, the default should be not to do them.

Fourth, appeals by large numbers of well-meaning Amateurs to the FCC to tell us what the Rules say and what the Rules mean undercut our argument that the Amateur Radio Service should be trusted to experiment with a great degree of freedom, largely regulate

our own activities, and appeal to the FCC for regulation and enforcement only when all other options have been exhausted.

Finally, in the past, when the FCC staff has been informally asked detailed questions about what is and is not legal, the outcome has been inconsistent and on occasion undesirable. In some cases, restrictive interpretations have been given that hindered our freedom to experiment, innovate, and serve the public interest. In some other cases, permissive interpretations have been given that were later reversed by the FCC, causing confusion. Rather than ask FCC staff for interpretations, which are unofficial, Amateurs should rely on the text of the FCC's Rules and on official Report and Order documents.

How can the ARRL offer additional assistance to Amateurs regarding compliance with the Rules and promote reasoned decision-making about appropriate uses of Amateur Radio?

This committee offers the following recommendations:

The ARRL should help Amateurs to better understand the FCC's Rules at 97.113. The editorial in September, 2009, *QST*, is a good start and should be followed up with additional educational material in the ARRL's media and emergency communications courses.

The ARRL should prepare and disseminate an informational paper about other radio services, both licensed and unlicensed, which may be available to businesses and organizations. Some such information is already presented in the ARRL's emergency communications courses, and that is a good start. However, judging from the number and content of inquiries received by our Regulatory Information Branch, additional information and a wider distribution are needed.

The ARRL should encourage all license course instructors to thoroughly familiarize themselves with the FCC's Rules on business communications and to emphasize it in their teaching – particularly when instructing employee groups who might use Amateur Radio inappropriately in the absence of proper education about the Rules.

The ARRL should encourage all license manual publishers to increase emphasis on §97.113 and to include material explaining why it is essential to understand and follow the rules concerning communications on behalf of an employer.

The ARRL should provide assistance in the design of training exercises which comply with the FCC's Rules for community organizations such as hospitals. The Headquarters Staff and knowledgeable Field Organization volunteers can cooperate to develop ideas and promote critical thinking about how to meet community needs within the scope of the FCC's Rules. Presentations on the subject that are intended for non-amateur audiences should be developed and provided to the Field Organization through ARRL Headquarters.

The ARRL's media should endeavor to describe public service and emergency communications projects which demonstrate how Amateurs carefully factored Rules compliance into their planning.

Conclusion

These guidelines are not intended to, and should not, discourage anyone from sponsoring or taking Amateur Radio licensing classes, or from obtaining a license. Amateur radio involvement teaches skills that are valuable across a broad range of communications platforms and media, and makes one a part of a community of public service-minded individuals.

Nor are these guidelines intended to discourage or hinder Amateurs from participating in public service and emergency communications or from seeking opportunities to fulfill the purpose stated in [§97.1].

Rather, they are intended to remind us that our obligation to abide by the FCC's Rules applies as much to public service and emergency communications activity as to any other kind of Amateur Radio operation. They are also intended to challenge us to consider the appropriateness of using Amateur Radio to serve the needs of particular enterprises in our communities, even if the FCC's Rules may not be an issue. Finally, they are intended to suggest positive actions the ARRL can take to improve awareness of the FCC's Rules as they pertain to public service and emergency communications.

1 The FCC's Rules for the Amateur Radio Service are posted on the ARRL's Web site at <http://www.arrl.org/FandES/field/regulations/news/part97/>.

2 The complete National Emergency Response Planning Committee report is available on the ARRL Web site at <http://www.arrl.org/announce/reports-2007/january/NERPC-32aa.pdf>.

3 The ARRL's Regulatory Information Branch (reginfo@arrl.org, <http://www.arrl.org/FandES/field/regulations/index.html>) helps address questions about FCC Rules and Regulations.

4 Part 90 regulates the Private Land Mobile Radio Services. According to the FCC Web site (http://wireless.fcc.gov/services/index.htm?job=service_home&id=private_land_radio), "Private land mobile radio systems are used by companies, local governments, and other organizations to meet a wide range of communication requirements, including coordination of people and materials, important safety and security needs, and quick response in times of emergency. These systems, which often share frequencies with other private users, make possible many day-to-day activities that people across the United States have come to rely on, whether directly or indirectly. Public safety agencies, utilities, railroads, manufacturers, and a wide variety of other businesses – from delivery companies to landscapers to building maintenance firms – rely on their business radio systems every day."

5 Part 95 regulates the Personal Radio Services

(http://wireless.fcc.gov/services/index.htm?job=service_home&id=personal_radio). These include the General Mobile Radio Service (GMRS), Family Radio Service (FRS), Citizens Band Radio Service (CB), and Multi-Use Radio Service (MURS). Searching on the names of these radio services on the FCC's Web site will provide additional information about the appropriate uses of these radio services.

ARRL – the national association for Amateur Radio
225 Main Street, Newington, Connecticut 06111
www.arrl.org

September 2009